

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

SHANE ROSE,

Petitioner,

v.

ERIC H. HOLDER, et al.,

Respondents.

Civil No. 10-3399 (SDW)

MEMORANDUM OPINION

1. On July 2, 2010, Petitioner filed a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 challenging his pre-removal-period detention at the Bergen County Jail in the custody of the Department of Homeland Security, pursuant to 8 U.S.C. § 1226, since September 15, 2009.

2. On March 15, 2009, Respondents filed a Supplemental Answer indicating that on September 1, 2010, an Immigration Judge ordered Petitioner's removal, on January 7, 2011, the Board of Immigration Appeals dismissed the appeal, and Petitioner did not file a petition for review in the Court of Appeals. Respondents ask this Court to dismiss the Petition as moot because Petitioner is no longer detained under the challenged statute, 8 U.S.C. § 1226(c).

3. Because an order of removal becomes "final upon the earlier of –(i) a determination by the Board of Immigration Appeals affirming such order; or (ii) the expiration of the period in which the alien is permitted to seek review of such order by the Board of Immigration Appeals," 8 U.S.C. § 1101(a)(47)(B), Petitioner's removal became administratively final when the Board of Immigration Appeals affirmed the removal order on January 7, 2011.

4. “[W]hen an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days (in this section referred to as the ‘removal period’).” 8 U.S.C. § 1231(a)(1)(A). Section 1231(a)(2) requires the Attorney General to detain aliens during the removal period: “During the removal period, the Attorney General shall detain the alien.” 8 U.S.C. § 1231(a)(2).

5. Federal statute provides that “[t]he removal period begins on the latest of the following:

- (i) The date the order of removal becomes administratively final.
- (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court’s final order.
- (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

8 U.S.C. § 1231(a)(1)(B).

6. Petitioner’s removal period began on January 8, 2011. See U.S.C. § 1231(a)(1)(B)(i).

7. Because Petitioner challenges his detention under 8 U.S.C. § 1226(c) and, as of January 7, 2011, Petitioner’s detention is no longer governed by § 1226, but is required by 8 U.S.C. § 1231(a)(2), Petitioner’s challenge to his detention under 8 U.S.C. § 1226(c) is moot. See Rodney v. Mukasey, 340 Fed. App’x 761 (3d Cir. 2009).

8. An appropriate Order accompanies this Memorandum Opinion.

s/Susan D. Wigenton
SUSAN D. WIGENTON, U.S.D.J.

DATED: March 18, 2011